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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re P. E., a Person Coming Under the  
Juvenile Court Law.

B208681

(Los Angeles County  
Super. Ct. No. CK69687)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MICHELLE E.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Denise M. Hippach, Associate County Counsel, for Plaintiff and Respondent.

Michelle E. (Mother) and Alan M. (Father) are the parents of P. E. (P.), born June 2003. Mother appeals from the orders dated June 11, 2008, terminating reunification services for her, and awarding sole legal and physical custody of P. to Father. We find her contentions to be without merit and affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Mother and Father were never married and maintain separate residences. Mother had physical custody of P. pursuant to a family law case.<sup>1</sup> Mother was formerly married to Darin D. and he had sole physical and legal custody of their two children. Father has two other children of his own. Only P. is the subject of this proceeding.

There had been a previous referral to the Department of Children and Family services (the Department) in 2005 pursuant to allegations that Mother had used narcotics and had driven her children while intoxicated. Mother had been arrested previously for driving under the influence.

On August 23, 2007, police and fire personnel found mother passed out at a grocery store while P. was with her. P. was taken into custody by the Department. A petition was filed pursuant to Welfare and Institutions Code section 300, subdivision (b) on August 28, 2007.<sup>2</sup> That same day, the court found a prima facie case for detaining P., and he was released to Father's care. Mother was allowed weekly monitored visits and was ordered to participate in individual counseling, drug counseling, and random drug testing.

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<sup>1</sup> This fact is taken from the social workers' reports. There is no court document reflecting such a family law order in the clerk's transcript, although there is a family law case summary index.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

The October 2007 social worker's report stated that Mother had enrolled in an inpatient alcohol rehabilitation program and recommended that Mother receive reunification services. Mother reported that she had completed a drug and alcohol program in 2005 and had signed up to take another program, but transportation problems had prevented her from attending. Father and Darin D. told the social worker that Mother had a severe alcohol problem and was in denial.

On November 16, 2007, Mother pled no contest to the allegations in the amended petition and the court sustained the allegations.<sup>3</sup> The court found that there was clear and convincing evidence that substantial danger existed to the physical health of P. and/or that P. was suffering from severe emotional damage, and that there was no reasonable means to protect P. without removing him from Mother's custody. It ordered that P. be placed with Father. Family reunification services were to be provided to Mother at the court's discretion, and Mother was allowed monitored visits twice a week. The court told Mother, "Okay. This is a 361.2 situation . . . [w]here we have a non-custodial father now getting custody of the child. . . . Ma'am, I am going to order you back here May 12, 2008 . . . . That is when you need to be here. If you are not here, we can go on without you. That is a hearing where we are going to determine whether or not we are going to continue your reunification services. That would be one of the issues. If you don't show up at that hearing, we could actually order them terminated which inevitably could . . . lead to the termination of your parental rights."

For the six-month review hearing on May 12, 2008, the social worker submitted a report which stated, inter alia, that Mother was in the process of relocating and had gotten a new job. She had completed her programs in alcohol treatment and anger management and was receiving group and individual counseling. She was currently attending

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<sup>3</sup> The amended petition alleged that Mother was intoxicated to the degree that she lost consciousness while P. was in her care, and that her history of substance and alcohol abuse endangered P.'s physical and emotional health and placed him at risk of physical and emotional harm and damage.

parenting classes and Alcoholics Anonymous (AA) meetings and had just obtained a sponsor. Mother had received two service awards while at the alcohol treatment center. She had participated in random testing from September 28, 2007, to December 27, 2007, with no positive or missed tests. From January 2008 until April 4, 2008, Mother had three missed tests and the rest were negative. The social worker had attempted to set up tests during two weeks in April but could not reach Mother by phone. Mother visited P. once a week for four hours during the time she was at the rehabilitation center, and twice a week for two hours once she left the center. The visits with P. had been appropriate but sporadic, which Mother attributed to the distance to Father's home and her inability to reach Father to schedule visits. Father, however, claimed that Mother sometimes did not show up for visits or would cancel a scheduled visit. P. said he liked living with Father and said he had a lot of fun living with him. Father thought Mother was still drinking. In April 2008, Father told the social worker that Mother had left a phone message and sounded like she was intoxicated. Father let the social worker listen to the taped message wherein Mother was mumbling and crying incoherently. It was the social worker's opinion that Mother was intoxicated. On April 22, 2008, the social worker asked Mother about the call and she said she was "absolutely not drinking in the least bit" and thought Father was trying to get back at her for reporting that Father was spanking P. and leaving him alone with his teenaged half-sisters. The social worker had spoken with Father about the corporal punishment and supervision issues. The social worker recommended that Mother continue to receive reunification services, that her visitation remain monitored, and that P. continue to live with Father.

At the May 12 hearing, the court indicated it was inclined to terminate reunification services and jurisdiction and set the matter for a contested hearing on June 11, 2008. It ordered the social worker "on call" for the contested hearing.

The contested hearing was held on June 11, 2008, at 2:45 p.m. The parties submitted a joint statement which listed only Mother and Father as witnesses. The social worker submitted a report dated June 11, 2008. Counsel for Mother explained that once Mother had read the June 11 report, she had asked the Department to have the social

worker available to be called as a witness. Counsel for the Department said that the social worker had cancelled a doctor's appointment to be at the hearing, was en route, and was supposed to have been there at 2:30 p.m.

The June 11 report contained new information. The court was advised that Mother had tested negative in her alcohol tests for the weeks of April 29, 2008, through May 22, 2008. The social worker had contacted the parenting class teacher, who reported that Mother had missed three classes during the months of March and April 2008, then dropped the class. Mother called and begged to be allowed to continue the classes, but then stopped coming after April 24, 2008. Mother provided the social worker with five signed AA meeting attendance cards from May but no signed cards from April. She did not currently have a sponsor, although she had tried to obtain one. Mother told the social worker she was having difficulty with grief issues over the death of her mother in 2007 and was given bereavement counseling referrals. In May, Mother accused Father of letting her have unmonitored visits with P. and alleged that the Department was not properly investigating Father, because he watched pornography in front of the children and left P. with Darin D. for the weekend. The social worker spoke with Father about the accusations, and he said that he had inadvertently left the television on and had not intentionally allowed the children to see pornography. Father said P. had only spent one night at Darin's house. Father vowed never to let these incidents happen again. Father also explained that sometimes his friends watched P. and he gave the social worker the name of the babysitter he used. The social worker visited the babysitter's house and found the babysitter and the home to be satisfactory. Darin D. told the social worker that Mother had left several messages on his phone while she was intoxicated. On one occasion, Mother's 13-year-old daughter refused to speak to her on the phone because Mother had been drinking. He confirmed that P. had spent one night at his house. The social worker concluded that Mother had been unable to maintain her sobriety, P. should remain in a stable home, and Mother's visits should be supervised. In contrast to her May 12 report, the social worker recommended that Mother no longer receive reunification services and that jurisdiction be terminated.

The court offered Mother the option of excluding the social worker's June 11 report, stating, "[Y]ou're objecting to this report as untimely or I'm admitting this report, but I am not sitting here waiting for the social worker to come at 3:00 . . . in the afternoon when I have a joint issue statement showing me that this was not the plan. . . ." Mother's counsel then replied, "I'll admit it, Your Honor. I'll have Mother address everything."

Mother testified that she had completed a 90-day rehabilitation program and an individual counseling program, and was in the fourth step of a 12-step program. She admitted making the April 11 phone call to Father, but denied that she said the words on the tape recording or had been drinking that day. She said she had been intensely upset about not seeing P. She was still struggling with grief over the death of her mother. She explained that she had not completed parenting classes because she had trouble getting rides. After she moved, she was unable to find a new parenting class. With regard to a drug test she had allegedly missed in March, Mother did not remember doing so and claimed the social worker had given her the wrong date on another occasion. She admitted that although she was allowed twice weekly visits, she only visited P. twice in November and December. She blamed her failure to visit on problems with procuring a monitor, her lack of transportation, and Father. She said there were periods of two to three weeks when she did not have visits, and she complained about that to the social worker "[a]ll of the time." She denied lying to the social worker to get revenge on Father. She said she had some unmonitored visits with P. and felt she was ready for unmonitored visits on the condition that she tested clean and participated in the 12-step program. She was currently employed. She wanted joint custody of P., but conceded that P. was safe with Father.

Mother submitted a letter from the National Council on Alcoholism and Drug Dependence which stated that Mother's misplacement of one of her AA meeting cards was not evidence of any misconduct or relapse. The writer, the director of program services, stated that she knew Mother personally, and felt she was motivated, diligent, and sincere in her efforts to regain custody of P.

The court stated that it had read and considered the May 12 report and the June 11 report. It believed that Mother had participated in most of the programs, but found she had “a lot of excuses” for failing to present AA meeting cards, complete parenting classes, and test clean. The court terminated reunification services to Mother, and found that return of P. to her physical custody would create a substantial risk of detriment to his safety, protection, or physical or emotional well-being. It terminated juvenile court jurisdiction and issued a family law order awarding Father sole physical and legal custody. Mother was allowed monitored visits twice weekly.

## **DISCUSSION**

### **I. Mother’s Request to Cross-Examine the Author of the June 11 Report**

Mother contends that the juvenile court’s refusal to allow her to cross-examine the social worker who prepared the June 11 report constituted a denial of her right to procedural due process. We disagree.

Mother ignores a key point. As the Department points out, Mother was given the option of barring the admission of the report. When she claimed cross-examination was necessary because the social worker had changed her favorable recommendation of May 12, the court responded, “That’s fine. I won’t admit today’s report.” Mother’s counsel sought confirmation that the court would not consider the Department’s now unfavorable recommendation that reunification services for Mother be terminated. The court noted that it had tentatively decided to terminate jurisdiction and reunification services in May despite the Department’s recommendation to the contrary, and stated that the Department’s recommendation in the June 11 report carried little weight. Once again, the court asked Mother’s counsel if she wanted the report admitted. At that point, she replied, “I’ll admit it, Your Honor. I’ll have Mother address everything.”

If the June 11 report had been excluded, the need for cross-examination would have been obviated. Mother made the tactical choice to admit the report. She cannot now complain about an alleged error she created. “Under the doctrine of waiver, a party

loses the right to appeal an issue caused by affirmative conduct or by failing to take the proper steps at trial to avoid or correct the error. [Citation.]” (*Telles Transport, Inc. v. Workers’ Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159, 1167.)

In any event, even if the court erred (a finding we do not make), Mother cannot show prejudice. P. was in Father’s custody and Father was a nonoffending parent. The juvenile court was correct in concluding that the focus of the hearing was whether continued jurisdiction was necessary. Mother admitted in her testimony that P. was safe in Father’s care, despite her claims to the contrary to the social worker. The court found no obstacle to continued placement of P. with Father. Thus, nothing in the June 11 report impacted the core issue before the court.

With regard to Mother’s claim that “[t]he social worker’s cross-examination was relevant to the issue of credibility and vital to the issues of custody, visitation, further family reunification and reasonable efforts [by the Department to provide services],” the only example she provides of a dispute between her testimony and the social worker’s report relates to an alleged missed drug test. Mother claimed the social worker was wrong when she reported that Mother had an unexcused missed drug test. The record reveals the court’s order terminating jurisdiction and reunification services rested on far more than one missed drug test.

The court ultimately determined that Mother had excuses for all of her *admitted* failures. She did not take advantage of court-ordered visitation and she failed to complete a parenting class. She was unable to provide proof that she had attended AA meetings in April 2008, claiming she lost the signature cards. As to Mother’s sobriety, the court did not believe her claim that she had stopped drinking. It referred to the phone messages she left where she sounded intoxicated. This was information provided to the court in a report, prepared prior to the June 11 hearing, to which Mother interposed no objection. Based on these circumstances, in addition to the alleged missed drug test, the court terminated reunification services and found that unmonitored visitation for Mother was not appropriate.



As Mother concedes, reversal is mandated only if we find it reasonably probable that the result would have been more favorable to her absent the alleged error. (*In re Celine R.* (2003) 31 Cal.4th 45, 60.) We conclude, even assuming error, she has failed to establish the requisite prejudice.

## **II. Termination of Jurisdiction and Custody Award**

Mother contends that the court erred in terminating dependency court jurisdiction and awarding Father custody. Mother argues that the social worker knew Father was disobeying court orders and allowing unmonitored contact between Mother and P.

Section 361.2 provides that the court may place a child with a noncustodial parent, terminate juvenile jurisdiction and enter a custody order, or continue jurisdiction and require home visits after three months. The court may also order reunification services to either or both parents and determine at a later review hearing which parent shall have custody of the child. (§ 361.2, subd. (b)(3); *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 316.)

In deciding whether to terminate jurisdiction, the court must determine whether there is a need for continued supervision, not whether the conditions that justified jurisdiction in the first place still exist. (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1451.) Even if reunification services were offered to the previously custodial parent, the court may still terminate jurisdiction if it determines that further supervision of the children in the home of the nonoffending parent is not required. (*Id.* at p. 1455.)

A juvenile court's decision to terminate jurisdiction and award custody of the child to a parent is reviewed for an abuse of discretion and we will not disturb the order unless the juvenile court made an arbitrary, capricious, or patently absurd determination. (*Bridget A. v. Superior Court, supra*, 148 Cal.App.4th at p. 300.)

In this case, reunification services were offered to Mother for eight months. After reports that P. was doing well in the home of Father and that the violations Mother reported were minor, the court concluded that there was no longer a need for continued supervision. P. was doing well in the home of Father, who had provided him something

Mother could not, a safe and stable environment. The new information contained in the June 11 report justified the change in the social worker's recommendation. The court was not obliged to maintain jurisdiction until Mother's problems were resolved. There was no abuse of discretion in terminating jurisdiction.

Nor do we find an abuse of discretion in the court's award of custody to Father. In making a custody determination the juvenile court considers what is in the best interests of the child. (*In re Chantal S.* (1996) 13 Cal.4th 196, 206.) Mother asserts the court's conclusion that she was not ready to share custody of P. is inconsistent with its findings that she had complied with most of her case plan and had appropriate interactions with P. This argument ignores the fact that the court found Mother had not adequately addressed the problem that led to P's detention—her struggle with alcohol. Although Mother offers an alternative explanation for some of her behavior and claims alcohol was not a contributing factor, there is ample evidence in the record to support the court's contrary finding. The court had evidence from the social worker, Father, and Darin D., all of whom reported that Mother had left messages while she was intoxicated.

In contrast to the difficulties Mother faced in providing a proper home for P., her son was doing well in Father's care and he had, by Mother's own admission, a safe environment in which to live. The court's decision to grant Father sole custody was hardly arbitrary or capricious.

### **III. The Sufficiency of Reunification Services**

Mother contends the court erred in finding that she had received adequate reunification services from the Department. She points to the fact that the court ordered the parents to participate in Parents Beyond Conflict and her to take part in grief counseling, and argues the Department should have made such counseling available prior to the court terminating jurisdiction. She also faults the social worker for failing to alleviate the transportation problems which made visitation difficult, offer new referrals for parenting classes after she moved, and investigate Mother's allegations against Father.

The finding that reasonable services were provided to a parent is reviewed for substantial evidence. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361-1362.) “A social services agency is required to make a good faith effort to address the parent’s problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult. [Citation.] However, in most cases more services might have been provided and the services provided are often imperfect.” (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.)

The Department gave Mother referrals for parenting classes, alcohol abuse programs, and counseling. She blames her failure for completing the programs on the Department. We are not persuaded by her attempt to deflect her lack of responsibility to others.

With regard to her parenting classes, Mother attended the first class on March 13, 2008. She attended the first, third, sixth, and seventh classes, and stopped coming altogether after April 24. When she moved to Sylmar to live with her father, she was referred to nearby programs. At the hearing on June 11, Mother admitted she had yet to reenroll. Mother claimed to have attended AA programs, but was unable to provide proof that she had attended any classes in April. She testified that she lost her April signature cards. As noted above, although Mother testified that she had stopped drinking, the court heard evidence from three independent sources to the contrary. Ample evidence supported the court’s conclusion that Mother had been provided adequate services.

Mother accuses the social worker of being biased for failing to adequately investigate Mother’s complaints against Father. The evidence does not support her contention. The social worker promptly questioned him about allowing the children to view pornographic material on television and leaving P. overnight with Darin D. The social worker was convinced the incidents would not reoccur. Mother must have also believed Father had learned his lesson, as she testified that P. was safe in Father’s care.

As to the Department’s failure to provide counseling aimed at easing the parents’ conflict and Mother’s grief, those programs were not part of Mother’s case plan. The

court ordered participation because it felt Mother would benefit despite its order granting custody of P. to Father.

In the final analysis, the problem was not that the Department provided inadequate services to Mother. Mother caused her services to be terminated because she failed to adequately address her struggles with alcohol. The court's finding that Mother received adequate services is amply supported by the evidence.

### **DISPOSITION**

The juvenile court's orders terminating Mother's reunification services and granting Father sole legal and physical custody are affirmed.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.